IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WP(C).No. 31780 of 2007(G)

PETITIONERS:
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1. THOMAS VARGHESE, DIRECTOR
KGA ESTATE MANAGEMENT (P) LTD
VII/311-C, NH-47 BYE PASS, KUNDANNUR
MARADU.P.O., ERNAKULAM DISTRICT.

2. ABDUL RAZAK.K.P. KIZHAKKEANIAKATH HOUSE
VADAKODE P.O., KANGARAPADY, ERNAKULAM
(DRIVER, VEHICLE NO.KL-40.1416 OWNED BY .
SUDHEER M.K., MADAVANA HOUSE,MUDICKAL P.O.
PERUMBAVOOR)

3. SALIM K.E. KOYAMPARAMBIL HOUSE,
PERINGALA P.O., KARIMUGAL, ERNAKULAM (DRIVER
VEHICLE NO.KL 40/6693, OWNED BY K.S. ABDUL SALAM
KOYAMPARAMBIL HOUSE, PERINGALA P.O. KARIMUGAL
ERNAKULAM)

4. BINEESH K.V., KANNOTHUDY HOUSE,
PONNURUNNY VYTTILA P.O., ERNAKULAM
(DRIVER VEHICLE NO. KL-7AX-2140,OWNED BY
K.K.REGUVARAN, 311/1105, KALLIKKATTUTHUNDY HOUSE
VYTTILA P.O. PONNURUNNY,ERNAKULAM)

5. KUNHUMON, KALAPPURACKAL HOUSE
PURANITUMMUGAL, VADAKODE P.O., KANGARAPADY
ERNAKUALM(DRIVER VEHICLE NO. KL-7BA/4559 OWNED
BY P.M. BEERAN, PALLIKKARA, ELOOR EAST
UDYOGAMANDAL P.O., ERNAKULAM)

BY ADV. SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN

RESPONDENTS:
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1. THE DISTRICT COLLECTOR, ERNAKULAM

2. THE TAHSILDAR,
KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

3. THE SUB INSPECTOR OF POLICE
PANANGAD POLICE STATION
PANANGAD, ERNAKULAM DISTRICT.

BY GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 31780 OF 2007 G
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Dated this the 6th day of November, 2007

J U D G M E N T

The reliefs sought for in this writ petition are to quash Ext.P3 and to declare that the confiscation of the vehicles of the petitioner is without authority. Petitioners is also seeking consequential reliefs.

2. The writ petition was necessitated on account of Ext.P3, by which the vehicles mentioned therein were ordered to be seized and penalty was imposed for its release, on the allegation that they were utilised for filling up of paddy fields.

3. According to the respondents, the petitioners had committed violation of the provisions of the Land Utilisation Order, 1967. On the other hand, petitioners submit that they had obtained Ext.P1 building permit from the Maradu Grama Panchayat for constructing a Five Star Hotel in Maradu village in Kanayannur Taluk. It is submitted that in the course of the execution of the work, the mud residue from the construction site is transported and stored in a plot of land purchased by the first petitioner's brother using the seized tipper lorries. According to the petitioners, the storage is for a temporary period and that

once basement work is over, it will be transported back to the construction site for levelling purposes. According to them, though they had explained this to the respondents, still, finding that there is violation of the provisions of the Land Utilisation Order, Ext.P3 has been issued.

4. In my view, it cannot be said that the petitioners have violated the provisions of the Land Utilisation order.

Clause 6(1) of the Land Utilisation order provides that :

> "no holder of any land which has been under cultivation with any food crop for a continuous period of three years immediately before the commencement of this order, shall convert or attempt to convert or utilise or attempt to utilise such land for the cultivation of any other food crop or for any other purpose except under and in accordance with the terms of a written permission given by the Collector".

In Ext.P3, apart from stating that there was attempt to reclaim paddy fields, there is no finding that the land in question has been under cultivation with any food crop for any period as prescribed in the said order and that the land under cultivation is attempted to be cultivated with any other food crop. In the light of the positive claim of the petitioners that the storage is

temporary, it cannot also be said that the land is converted or attempted to be converted or utilised or attempted to be utilised for any purpose as mentioned in Clause 6(1). If that be so, Clause 6(1) has no relevance.

5. In so far as Clause 6(2) is concerned, it is identically worded, but then the only requirement for its application is that the land in question should be cultivated with food crops for a period of three years at any time, after the commencement of this order. The reasoning as regards Clause 6(1) also applies with equal force in regard to Clause 6(2) of the Land Utilisation Order as well. If that be so, it cannot be said that there has been any violation of Clause 6 of the Land Utilisation Order.

6. But then, this reasoning can apply only if the storage now resorted to by the petitioner is only temporary and is for retransportation to the construction site. Petitioners have undertaken before this court that this is only temporary and that they will not alter the nature of the land in any manner and that the material will be transported back to the construction site. I record this undertaking. The petitioners shall also file a similar

undertaking before the 1st respondent.

7. Ext.P3 order in this case will stand quashed and the Bank guarantee furnished by the petitioners pursuant to the interim order dated 25/10/2007 will be released to the petitioners. However, before further work is undertaken by the petitioners, petitioners shall file an undertaking that the storage now resorted to by them is only temporary and that the mud stored will be retransported back to the construction site immediately after the basement work is complete.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

Rp